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STATE OF CALIFORNIA

DEPARTMENT OF RESOURCES RECYCLING & RECOVERY

In the matter of:

MELVIN HARRIS AND JUDY HARRIS,
OPERATORS DBA: BRANDT ROAD
WASTE TIRE SITE

TPID NO: 1528927

RESPONDENTS.

AMENDED ADMINISTRATIVE
COMPLAINT FOR WASTE TIRE
STORAGE ADMINISTRATIVE
PENALTIES PUBLIC RESOURCES
CODE SECTION 42850, ET SEQ.

AGENCY NO: 2010-010985-ADC

INTRODUCTION

This Administrative Complaint for Waste Tire Storage Administrative Penalties is issued by the Department of Resources Recycling and Recovery to MELVIN HARRIS AND JUDY HARRIS, OPERATORS DBA: BRANDT ROAD WASTE TIRE SITE (RESPONDENTS) seeking \$918,000.00 in administrative penalties. The California Integrated Waste Management Board (CIWMB) is now the Department of Resources Recycling and Recovery (CALRECYCLE). CALRECYCLE succeeded to CIWMB's authority on January 1, 2010, pursuant to Public Resources Code (PRC) section 40401(a)(1). Section 42850(b) of the PRC authorizes CALRECYCLE to issue a complaint to any person that may be administratively liable. This complaint is so issued

1 based on the following facts.

2 **STATEMENT OF FACTS**

3 1. CALRECYCLE has authority to inspect, permit, regulate and conduct
4 enforcement actions against Waste Tire Facilities (WTF) within the State of California
5 under PRC section 42800, et seq., and attendant regulations contained in Title 14 of the
6 California Code of Regulations (CCR).

7 2. PRC section 42824 makes it unlawful to direct or transport waste tires to a
8 major WTF or to accept waste tires at a major WTF unless the operator has obtained a
9 major WTF permit.

10 3. PRC section 42808(b) defines a major WTF as being a WTF where, at
11 any time, 5,000 or more waste tires are or will be stored, stockpiled, accumulated, or
12 discarded.

13 4. 14 CCR section 18420 requires the operator of a WTF to acquire a WTF
14 permit, unless specific conditions are met.

15 5. During the time from June 19, 2009 and July 13, 2010, RESPONDENTS
16 allowed waste tires to be illegally stored at 7408 Brandt Road, Buttonwillow, California
17 92306 (the site).

18 6. During the time from June 19, 2009, and July 13, 2010, RESPONDENTS
19 did not possess a WTF permit, and the site did not meet specific conditions set forth in
20 14 CCR section 18420 that would exempt RESPONDENTS from the permit
21 requirement.

22 7. On September 8, 2009, CIWMB received a referral package from the Kern
23 County Environmental Health Services Department that requested further enforcement
24 of the site based on previous inspections that took place on June 19, 2009, and July 23,
25 2009, during which the waste tire grantee for Kern County observed multiple violations
26 of California waste tire storage laws.

27 8. During an inspection on December 8, 2009, and documented in Waste
28 Tire Survey and Inspection Report (Inspection Report) number I9-1058160, Vance

1 Tracy, inspector for the CIWMB waste tire enforcement division, observed 6,170 waste
2 tires on the site, in violation of PRC section 42824 and 14 CCR section 18420. Mr.
3 Tracy further observed that no impermeable barrier existed to prevent rain water from
4 accumulating in tires, in violation of 14 CCR section 17353; that the waste tires were
5 being stored in an outdoor area exceeding 5,000 square feet, in violation of 14 CCR
6 section 17354; that the waste tires were being stored within 40 feet of potentially
7 flammable material, including wood and hazardous liquids, in violation of 14 CCR
8 section 17351; that the tires were stored on the ground without adequate drainage, in
9 violation of 14 CCR section 17354; and that no protection existed on site to prevent
10 pyrolitic oil run-off or migration of pyrolitic oil into ground water, also in violation of 14
11 CCR section 17354.

12 9. On April 3, 2010, CALRECYCLE served Cleanup and Abatement Order
13 2010-010985-CAO (CAO). The CAO required RESPONDENTS to immediately cease
14 and desist from storing over 499 waste tires on the site, immediately cease and desist
15 from creating illegal WTFs, and to remove all waste tires from the site within 30 days of
16 the date of service (May 3, 2010). In order to remove the waste tires, the CAO required
17 RESPONDENTS to enlist a waste tire hauler registered with the State of California,
18 complete Comprehensive Trip Logs (CTL) documenting each load of waste tires hauled,
19 and submit each CTL to CALRECYCLE within 45 days of service of the CAO.

20 10. During an inspection on July 13, 2010, and documented in Inspection
21 Report number I6-1059049, Mr. Tracy observed 6,170 waste tires on the site. In
22 Inspection Report number I6-1059049, Mr. Tracy noted, "All of the violations noted in
23 the previous inspection of 12-8-09 (Reference number: I9-1058160) remain outstanding.
24 . . . Site is unchanged."

25 11. During a re-inspection on November 5, 2012, and documented in Survey
26 & Inspection Report, Inspection Form Number IW-1003378, Mr. Tracy observed 6,170
27 waste tires on the site. Mr. Tracy noted, "The site is unchanged since the last inspection
28 in March 2012 (See inspection report number I1-1169190 for details). . . . All of the

violations previously noted in the prior inspection reports continue to exist."

ALLEGATIONS OF SPECIFIC VIOLATIONS

12. For 918 days between May 3, 2010, and November 5, 2012, RESPONDENTS failed to comply with the CAO, thereby violating PRC section 42845, which requires any person, upon order of CALRECYCLE, to clean- up, abate or otherwise take remedial action at a waste tire facility.

13. RESPONDENTS violated PRC section 42824 by storing, stockpiling, or accumulating 5,000 or more waste tires on site without first obtaining a major WTF permit.

14. RESPONDENTS violated 14 CCR section 18420 by failing to obtain a permit for the site.

15. RESPONDENTS violated 14 CCR section 17351 by failing to comply with fire prevention measures for waste tire storage.

16. RESPONDENTS violated 14 CCR section 17353(a) for failing to comply with vector control requirements for waste tire storage.

17. RESPONDENTS violated 14 CCR section 17354 for failing to comply with storage requirements for waste tires stored outdoors.

PENALTIES

18. MELVIN HARRIS AND JUDY HARRIS (RESPONDENTS) are liable for administrative penalties as set forth in PRC section 42850 for negligent violations, or PRC section 42850.1 for intentional violations. Penalties cannot exceed \$5,000 per day for a negligent violation and \$10,000 per day for an intentional violation.

19. Pursuant to PRC section 42846.5, the imposition of penalties herein may form the basis for a subsequent CALRECYCLE order permitting CALRECYCLE or its contractor's access to the property mentioned herein to perform cleanup, abatement or remedial work under PRC section 42846. Further, PRC section 42847 authorizes CALRECYCLE to seek recovery of the costs of any cleanup abatement or remedial work.

1 20. CALRECYCLE's authority to assess administrative penalties against
2 RESPONDENTS is set forth in PRC section 42850(a) and (b), which states:

3 (a) Any person who negligently violates any provision of this chapter, or any
4 permit, rule, regulation, standard, or requirement issued or adopted pursuant to
5 this chapter is liable for a civil penalty of not less than five hundred dollars (\$500)
6 or more than five thousand dollars (\$5,000), for each violation of a separate
7 provision or, for continuing violations, for each day that the violation continues.

8 (b) Liability under this section may be imposed in a civil action or liability may be
9 imposed administratively pursuant to this article.

10 RESPONDENTS are subject to an administrative penalty of up to \$5,000 per
11 violation for each day RESPONDENTS are in violation.

12 21. 14 CCR section 18429 authorizes penalties of up to two thousand dollars
13 (\$2,000) per day for every day the violation continues after the deadline set forth in the
14 CAO against unpermitted WTFs that accumulate between five thousand (5,000) and
15 nine thousand nine hundred ninety nine (9,999) waste tires.

16 22. In setting an appropriate administrative penalty, the hearing officer must
17 take into consideration the provisions of PRC section 42852.

18 23. In determining an appropriate administrative penalty for RESPONDENTS,
19 as required by 14 CCR section 18465, CALRECYCLE has taken into consideration the
20 following factors:

- 21 (1) The nature, circumstances, extent, and gravity of the violation.
- 22 (2) Evidence that the violation was willful or negligent.
- 23 (3) The good or bad faith exhibited by the party.
- 24 (4) History of violation of the same or similar nature.
- 25 (5) The extent to which the party has cooperated with the Department in
26 remediating or injury caused by his or her violation.
- 27 (6) The extent that the party has mitigated or attempted to mitigate any damage
28 or injury caused by his or her violation.
- (7) Evidence of any financial gain resulting from the violation.
- (8) Such other matters as justice may require.

24. Accordingly, CALRECYCLE hereby requests that an administrative penalty be assessed against RESPONDENTS in the sum of \$918,000.00.

RIGHT TO HEARING

On June 10, 2011 you were served with an Administrative Complaint and notified that pursuant to the provisions of section 42962(c) of the California Public Resources Code and Government Code section 11500 that you are entitled to a hearing to refute the allegations against you contained in the Administrative Complaint. On June 13, 2011 you requested a hearing. A hearing has been scheduled for March 4, 2013, at 9:00 a.m. at Office of Administrative Hearings, 320 W. Fourth Street, Suite 630, Los Angeles, California 90013. It is not necessary to request a new hearing in regard to this Amended Administrative Complaint. Pursuant to the above referenced Public Resources Code and Government Code sections, discovery requests by any party must be made within thirty days after the service of this Amended Administrative Complaint.

Dated this 15th day of February, 2013.

HEATHER L. HUNT
Staff Counsel III